

Report to Revenue and Transportation Interim Committee
Comparative Study of Montana's Centrally Assessed Property Taxation
Statutes and Methodologies

by

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Introduction

In 2011, the Montana legislature adopted a joint resolution (SJ 17) directing that an interim study be conducted to analyze Montana's system of valuing and taxing centrally assessed properties and businesses. The Resolution was adopted, in part, to respond to concerns raised as to the impact of current central assessment policies on the predictability and stability of property valuation and their effect on the business environment. This project has been assigned to the Revenue and Transportation Interim Committee, which intends to complete its analysis by September 15, 2012.

I am a member of the Montana State Bar and have thirty years of experience as a practicing attorney, primarily in the area of business and tax planning. One of my areas of expertise is state and local taxation, including property taxation. I served on the Montana Property Tax Study Task Force convened by Governor Racicot. I have also served for more than ten years as the Chairperson of the Legislative Committee of the Montana State Bar Section on Business, Estates, Taxation and Real Property. I currently teach property and business-related classes at the University of Montana School of Law.

Proposed Study

I intend to conduct a comparative study on the valuation and taxation of centrally assessed property for the Committee's consideration. The study will include a review and analysis of the centrally assessed property tax statutes and methodologies of Montana as compared to the statutes and methodologies of several other states in the region, such as Colorado, Idaho, North Dakota, Washington, Wyoming, and Utah. I will initially select and review the statutes and methodologies of ten to twelve states, and then narrow my study to four to five states that provide the most comparative models.

Components of Study

As currently proposed, my study will include the following elements:

- (1) The study will begin with an introductory discussion of the history, purpose, and role of property taxes, which are a major source of revenue for local and

state governments. This section will include a summary of important distinctions between property taxes (which are designed to impose a tax based upon the value of the property involved and not on the revenue generated by the property) and other types of state and local taxes.

(2) The study will then review the development of the concept of central assessment of certain types of properties and businesses, with a state-by-state summary of the categories of properties and businesses originally and currently subject to central assessment. One of the purposes of this section is to identify the types of properties and businesses best suited for central assessment, and to determine whether Montana and the other states are increasingly applying central assessment to a wider group of properties and businesses.

(3) An important focus of the study will be the evolution and use of different appraisal methodologies to determine the value of locally versus centrally assessed properties, with a state-by-state summary of the types of methodologies currently applied to centrally assessed properties. This section will also analyze when and to what degree the legislatures, by statute, have undertaken to specify certain methods of valuation to be applied, as compared to delegating authority for the development of valuation methodologies to administrative agencies, and how administrative agencies have responded to these mandates or delegations.

(4) After identifying the different approaches used by states to ascertain the values of locally versus centrally assessed properties, the study will analyze the disparities that may result from the application of these different methodologies, with a special focus on whether and to what extent the central assessment process incorporates items (such as income or exempt intangible personal property) not intended to be assessed or generates a value that is significantly different from locally assessed property of a similar character. This portion of the study will also identify and compare any measures required to be taken by assessors to eliminate the potential inclusion of exempt assets (such as intangible personal property and goodwill) from the central assessment process.

(5) The study will include a comparison of property tax classification systems and rates established by Montana and the other states, and discuss how these classification systems and rate variations intersect with and affect centrally assessed properties and businesses.

(6) To put all of these issues into context, the study will conclude with an analysis of how Montana and the other states assess, for property tax purposes, a specific group of industries: providers of telecommunications services, internet access, cable television and broadcast television. Historically, Montana has locally assessed cable television systems and broadcast television equipment as Class Eight properties, while centrally assessing telecommunications services

companies. These industries present an interesting case study for several reasons:

(A) Although similar in some respects, these industries also have significant differences. The distinction originally made by the Montana legislature in classifying some industries as locally assessed and others as centrally assessed provides an opportunity to discuss the policies and rationales behind local versus central assessment.

(B) These industries have changed dramatically over the past decade, and, at least in Montana, the Department of Revenue has responded by questioning and changing the tax policies and procedures that it applies in valuing their properties, without corresponding changes in the statutory framework. This provides an opportunity to examine the roles of administrative agencies and the legislature in establishing tax policies and procedures.

(C) Several companies provide services that could fall into more than one class, such as cable television and telecommunications, which raises important issues regarding the interrelationship of classifications and local versus central assessment. The study will allow the Committee to observe the differences that result from differing classifications, and some of the complexities faced when industries cross classes.

(D) These industries are subject to federal regulation (including the federal Internet Tax Freedom Act that severely limits the ability of state and local governments to impose property taxes on internet access). This raises the issue of whether and to what degree states must take into account these federal statutes and apply consistent principles.

Conclusion

It is my goal to present the results of my comparative study to the Committee on or before its July 2012 meeting. If any of the members of the Committee have specific questions or issues that they would like for me to address in the study, please contact me:

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